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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 BMO HARRIS BANK N.A.,

12 Plaintiff,

13 v.

14 THOMSONS LOGISTICS INC., et al.,

15 Defendants.
16
17

Case No. 1:21-cv-00635-NONE-SAB

ORDER DIRECTING CLERK OF COURT
TO ASSIGN A DISTRICT JUDGE AND TO
CLOSE CASE AND ADJUST DOCKET TO
REFLECT VOLUNTARY DISMISSAL
PURSUANT TO RULE 41(a) OF THE
FEDERAL RULES OF CIVIL
PROCEDURE

(ECF Nos. 8, 10)

18 On April 15, 2021, Plaintiff BMO Harris Bank N.A. filed this action against Defendants
19 Thomsons Logistics Inc., and Rohan Panakkal, alleging breach of contract. (ECF No. 1.) On
20 May 10, 2021, an answer was docketed. (ECF No. 7.) On July 7, 2021, Plaintiff filed a notice of
21 voluntary dismissal dismissing the action without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).
22 (ECF No. 8.) On July 8, 2021, the Court disregarded Plaintiff's request for voluntary dismissal,
23 finding it to be defective under Rule 41(a)(1) because it was not a signed stipulation by all
24 parties who have appeared in this action, and was not a motion under Rule 41(a)(2). (ECF No.
25 9.) The Court ordered Plaintiff to file a request for dismissal that complies with Rule 41. (Id.)
26 On July 12, 2021, a stipulation was filed for dismissal of this action. (ECF No. 10.)

27 “[U]nder Rule 41(a)(1)(A)(i), ‘a plaintiff has an absolute right to voluntarily dismiss his
28 action prior to service by the defendant of an answer or a motion for summary judgment.’ ”

1 Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)
2 (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). The Ninth Circuit has
3 held that Rule 41(a) allows a plaintiff to dismiss without a court order any defendant who has yet
4 to serve an answer or motion for summary judgment. Pedrina v. Chun, 987 F.2d 608, 609 (9th
5 Cir. 1993). Rule 41 also provides for dismissal of an action through “a stipulation of dismissal
6 signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

7 The Court notes that the stipulation of dismissal filed on July 12, 2021, is signed by
8 Rohan Panakkal as President of Thomsons Logistics Inc., and by Rohan Panakkal in an
9 individual capacity. (ECF No. 10.) The docket in this action reflects that both Defendants are
10 proceeding *pro se*, and it appears this designation was placed when the answer was entered on
11 the docket. Upon review of the answer in this action, it appears to only be a one-page letter
12 entitled “REPLY TO SUMMONS,” with the letterhead for Thomson Logistics, and signed by
13 Rohan Panakkal without a designation of president or otherwise, and no indication the answer
14 was filed on behalf of him in an individual capacity, or only in the capacity of representing the
15 corporate entity. (ECF No. 7.)

16 A corporation can only appear in court through a licensed attorney. D-Beam Ltd. P'ship
17 v. Roller Derby Skates, Inc., 366 F.3d 972, 973–74 (9th Cir. 2004) (“It is a longstanding rule
18 that”[c]orporations and other unincorporated associations must appear in court through an
19 attorney.”) (citations omitted) (alteration in original); Local Rule 183(a) (“A corporation or other
20 entity may appear only by an attorney.”). Accordingly, any appearance by the corporation thus
21 far without a licensed attorney was ineffective, and the Court finds the notice of voluntary
22 dismissal as to the corporation was valid. See Commercial Space Mgmt. Co., Inc., 193 F.3d at
23 1078 (“[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the
24 parties are left as though no action had been brought, the defendant can’t complain, and the
25 district court lacks jurisdiction to do anything about it.”). Further, to the extent that Defendant
26 Rohan Panakkal appeared through the filed answer in an individual capacity, Rohan Panakkal
27 has signed the stipulation of dismissal. The Court shall give effect to the filings and dismiss this
28 action pursuant to Rule 41(a).

1 Accordingly, the Clerk of the Court is HEREBY DIRECTED to assign a district judge to
2 this case for the purpose of closing the case and then to adjust the docket to reflect voluntary
3 dismissal of this action pursuant to Rule 41(a).

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5 IT IS SO ORDERED.

6 Dated: July 13, 2021


UNITED STATES MAGISTRATE JUDGE